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2008 MAY 27 PM 3:06

CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

BY _____

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Attorneys for Plaintiff,
WILLIE J. CAUSEY, JR.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FMC (CWx)

WILLIE J. CAUSEY, JR.,

Plaintiff

v.

BNC MORTGAGE, INC., AND DOES 1-10

Defendants

Case No. 08 03460

COMPLAINT FOR DAMAGES AND INJUNCTION; DEMAND FOR JURY TRIAL

1. DECLARATORY RELIEF
2. TRUTH IN LENDING ACT VIOLATIONS

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JURISDICTION

1. Jurisdiction is conferred on this Court as to claims under the Truth in Lending Act ("TILA") 15 U.S.C. § 1640(e) and 28 U.S.C. § 1331. This Court has jurisdiction over Plaintiff's declaratory relief claim pursuant to 28 U.S.C. § 2201.

PLAINTIFF HEREIN ALLEGES THAT:

PARTIES

2. Plaintiff, Willie J. Causey, Jr., (hereafter "Plaintiff") is a natural person, and resides in Los Angeles County, California.

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3. Defendant BNC Mortgage, Inc. (hereafter "BNC") is, and at all times relevant was, a Corporation with a principal place of business in California, located in Irvine, CA.
4. Plaintiff believes and thereon alleges that at all times relevant hereto, BNC, in the ordinary course of business, holds and services loans for consumers located nationwide, including California.
5. At all times herein mentioned each Defendant was the agent or employee of each and all of the other Defendants and was acting within the course and scope of such agency or employment.
6. That the true names or capacities, whether individual, corporate, associate, or otherwise of Defendants, DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names and capacities and will amend this Complaint to show their true names and capacities when the same have been ascertained.

FACTUAL ALLEGATIONS

7. On or about May 18, 2006, Plaintiff entered into a consumer credit transaction (hereafter "Mortgage") which was then assigned to Defendants. The Mortgage was secured by the real property located at 7492 Whitewood Drive, Fontana, California 92336, which was Plaintiff's residence at the time.
8. On or about May 20, 2006, Plaintiff signed and sent his rescission notice to the originating lender, indicating that he wished to exercise his right of rescission. This was done within the three day period indicated on the notice.
9. The originating lender did not rescind the Mortgage. Instead, it funded the Mortgage and sold it to BNC. Plaintiff then notified BNC that he had rescinded the Mortgage within the 3 day period, and requested that they honor his rescission. BNC refused to do so.
10. BNC's legal department claimed that because the originating lender did not receive the notice within 3 days, it was not effective. This was an error of law:

effective notice under the Truth in Lending Act is based on when the notice is sent, not when it is received. The Truth in Lending Act also provides that errors of law are not a defense.

11. As part of Plaintiff's efforts to ensure that BNC rescinded the Mortgage, in November 2006, Plaintiff secured another refinance in order to tender the rescission balance to BNC. BNC refused to accept the tender, and instead demanded that Plaintiff pay the full Mortgage balance, not the lesser rescission balance.

12. BNC changed its position on or about March 2007, and decided to accept the rescission balance. However, by that time, Plaintiff's refinance had fallen through, and he was unable to obtain a new mortgage after BNC's change as a result of the decline in real estate values and the onset of the mortgage crisis.

13. Defendants noticed a foreclosure sale for May 29, 2008. Plaintiff's counsel contacted BNC's attorneys to have the foreclosure sale postponed, and informed BNC's attorneys that Plaintiff would need a response by Friday, May 23, 2008. BNC's attorneys did not respond, therefore Plaintiff has no choice but to seek immediate relief from this Court.

FIRST CAUSE OF ACTION

(Against all Defendants, for Declaratory Relief)

14. Plaintiff realleges and incorporates herein by reference each and every allegation set forth in paragraphs 1 through 13.

15. A real and substantial controversy has arisen between Plaintiff and Defendants regarding the legality of Defendants' impending foreclosure, and regarding how much money, if any, must be repaid on the note to Defendants in accordance with the Truth in Lending Act.

16. Plaintiff seeks a declaration that he properly rescinded the Mortgage within 3 days, and that as of the date of that rescission, Defendants' lost any security interest in the subject property.

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17. Plaintiff seeks a further declaration that, having tendered the rescission balance to BNC in November 2006, because BNC did not accept Plaintiff's tender, Plaintiff may keep the proceeds without any further obligation to repay the Mortgage.

SECOND CAUSE OF ACTION

(Against all Defendants, for Violations under TILA)

18. Plaintiff realleges and incorporates herein by reference each and every allegation set forth in paragraphs 1 through 13.

19. Plaintiff properly rescinded the mortgage within 3 days. By operation of law and contract, the mortgage was automatically rescinded once the rescission notice was sent. Plaintiff then tendered the rescission balance to BNC, but it refused to accept the rescission balance, instead demanding full payment.

20. Defendants refused to honor Plaintiff's rescission, and have not canceled their security interest or returned Plaintiff's payments.

21. Defendants' failure to take the action necessary and appropriate to reflect the termination of the security interest within 20 days after Plaintiffs' rescission of the transaction violates 15 U.S.C. § 1635(b) and entitles Plaintiffs to actual damages, statutory damages, attorney's fees, costs, and orders enforcing their rescission of the transaction.

WHEREFORE PLAINTIFFS PRAY JUDGMENT AS FOLLOWS:

FOR THE FIRST AND SECOND CAUSES OF ACTION AGAINST ALL DEFENDANTS:

A. Rescission of the transaction, including a declaration that the Plaintiff is not liable for the mortgage, and that Plaintiff may keep the loan proceeds without any further obligation;

B. A declaration that the security interest in Plaintiff's property created under the transaction is void, and an order requiring Defendants to release such security interest;

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C. Return of any money or property given by Plaintiff to anyone, including Defendants, in connection with the transaction;

D. Statutory damages of $2,000 per violation as determined at trial;

E. An order that, because Defendants failed to act in response to Plaintiff's notice of rescission and subsequent attempts at tender, Plaintiff has no duty to tender the loan proceeds to Defendant;

F. Enjoin Defendants during the pendency of this action, and permanently thereafter, from instituting, prosecuting, or maintaining foreclosure proceedings on the Plaintiff's property, from recording any deeds or mortgages regarding the property or from otherwise taking any steps to deprive Plaintiff of ownership of that property;

G. Actual damages in an amount to be determined at trial;

H. An award of reasonable attorney's fees and costs, pursuant to 15 U.S.C. § 1640(a)(3);

I. For costs of suit; and

J. For such other and further relief as the court may deem proper.

A JURY TRIAL IS DEMANDED.

Dated: May 23, 2008

By: _____

Nathan Fransen
Matthew Tye
Attorneys for Plaintiff

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Florence-Marie Cooper and the assigned discovery Magistrate Judge is Carla Woehrle.

The case number on all documents filed with the Court should read as follows:

CV08- 3460 FMC (CWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WILLIE J. CAUSEY, JR.,

PLAINTIFF(S)

v.

BNC MORTGAGE, INC., AND DOES 1-10

DEFENDANT(S).

CASE NUMBER CV 08 - 03460 FMC (CWx)

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney FRANSEN AND MOLINARO, LLP, whose address is:

980 Montecito Dr., Ste. 206
Corona, CA 92879

an answer to the ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-claim which is herewith served upon you within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

SHERRI R. CARTER
Clerk, U.S. District Court

Dated: MAY 27 2008

By: L. MURRAY
Deputy Clerk

SEAL
(Seal of the Court)

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)

WILLIE J. CAUSEY, JR.

DEFENDANTS

BNC MORTGAGE, INC., AND DOES 1-10

(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): SAN BERNARDINO

County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only): ORANGE

(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
FRANSEN AND MOLINARO, LLP
980 Montecito Dr., Ste. 206
Corona, CA 92879

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

☐ 1 U.S. Government Plaintiff ☑ 3 Federal Question (U.S. Government Not a Party)

☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☑ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☑ No ☑ **MONEY DEMANDED IN COMPLAINT: $** Approx. $400,000.00

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 U.S.C. § 1601 et seq., for violations of the Truth in Lending Act

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
☐ 400 State Reapportionment	☐ 110 Insurance	☐ 310 Airplane	☐ 370 Other Fraud	☐ 510 Motions to Vacate Sentence Habeas Corpus	☐ 710 Fair Labor Standards Act
☐ 410 Antitrust	☐ 120 Marine	☐ 315 Airplane Product Liability	☑ 371 Truth in Lending	☐ 530 General	☐ 720 Labor/Mgmt. Relations
☐ 430 Banks and Banking	☐ 130 Miller Act	☐ 320 Assault, Libel & Slander	☐ 380 Other Personal Property Damage	☐ 535 Death Penalty	☐ 730 Labor/Mgmt. Reporting & Disclosure Act
☐ 450 Commerce/ICC Rates/etc.	☐ 140 Negotiable Instrument	☐ 330 Fed. Employers' Liability	☐ 385 Property Damage Product Liability	☐ 540 Mandamus/ Other	☐ 740 Railway Labor Act
☐ 460 Deportation	☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 340 Marine	BANKRUPTCY	☐ 550 Civil Rights	☐ 790 Other Labor Litigation
☐ 470 Racketeer Influenced and Corrupt Organizations	☐ 151 Medicare Act	☐ 345 Marine Product Liability	☐ 422 Appeal 28 USC 158	☐ 555 Prison Condition	☐ 791 Empl. Ret. Inc. Security Act
☐ 480 Consumer Credit	☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans)	☐ 350 Motor Vehicle	☐ 423 Withdrawal 28 USC 157	FORFEITURE/ PENALTY	PROPERTY RIGHTS
☐ 490 Cable/Sat TV	☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 355 Motor Vehicle Product Liability	CIVIL RIGHTS	☐ 610 Agriculture	☐ 820 Copyrights
☐ 810 Selective Service	☐ 160 Stockholders' Suits	☐ 360 Other Personal Injury	☐ 441 Voting	☐ 620 Other Food & Drug	☐ 830 Patent
☐ 850 Securities/Commodities /Exchange	☐ 190 Other Contract	☐ 362 Personal Injury-Med Malpractice	☐ 442 Employment	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 840 Trademark
☐ 875 Customer Challenge 12 USC 3410	☐ 195 Contract Product Liability	☐ 365 Personal Injury-Product Liability	☐ 443 Housing/Acco-mmodations	☐ 630 Liquor Laws	SOCIAL SECURITY
☐ 890 Other Statutory Actions	☐ 196 Franchise	☐ 368 Asbestos Personal Injury Product Liability	☐ 444 Welfare	☐ 640 R.R. & Truck	☐ 861 HIA (1395ff)
☐ 891 Agricultural Act	REAL PROPERTY		☐ 445 American with Disabilities - Employment	☐ 650 Airline Regs	☐ 862 Black Lung (923)
☐ 892 Economic Stabilization Act	☐ 210 Land Condemnation		☐ 446 American with Disabilities - Other	☐ 660 Occupational Safety /Health	☐ 863 DIWC/DIWW (405(g))
☐ 893 Environmental Matters	☐ 220 Foreclosure		☐ 440 Other Civil Rights	☐ 690 Other	☐ 864 SSID Title XVI
☐ 894 Energy Allocation Act	☐ 230 Rent Lease & Ejectment				☐ 865 RSI (405(g))
☐ 895 Freedom of Info. Act	☐ 240 Torts to Land				FEDERAL TAX SUITS
☐ 900 Appeal of Fee Determination Under Equal Access to Justice	☐ 245 Tort Product Liability				☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 950 Constitutionality of State Statutes	☐ 290 All Other Real Property				☐ 871 IRS-Third Party 26 USC 7609

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☑ No ☐ Yes

If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number: CV 08 - 03460 FMC (CWx)

MAY 27 2008

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? ☑ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or

☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.

WILLIE J. CAUSEY, JR. - SAN BERNARDINO

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

☐ Check here if the U.S. government, its agencies or employees is a named defendant.

BNC MORTGAGE, INC. - ORANGE

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

ALL CLAIMS - SAN BERNARDINO

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ **Date** May 23, 2008

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))